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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,699

09/19/2006

Jeffrey Lee Jensen

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EXAMINER

PURDY, KYLE A

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

01/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,699	Applicant(s) JENSEN ET AL.	
	Examiner Kyle Purdy	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2 pages (07/09/2008 and 11/14/2008)</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION
Response to Restriction Requirement

1. Applicant's election of I in the reply filed on 11/14/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). This requirement is deemed proper and made final.

Status of Application

2. Claim 1 is pending and claims 1 is presented for examination on the merits. The following rejections are made.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liang (CN1123088, 05/29/1996; machine translation provided) in view of Hackler et al. (US 6040345, 03/21/2000) as evidenced by Hagiwara et al. (US 7422762).

6. Liang is directed to fast acting agent for attracting and killing cockroaches. The composition comprise from between 1-96% by weight soybean powder, from between 1-96% by weight white sugar and various amounts of insecticides. Exemplified insecticides include boric acid and tetramethrin. It is taught that soy powder and white sugar have a luring effect for the cockroach.

7. Liang fails to teach the use of hexaflumuron as the pesticide.

8. Hackler is directed to benzoylphenylurea insecticides and their use in controlling cockroach populations. A disclosed compound is hexaflumuron (see column 1, line 15).

9. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Liang and Hackler with a reasonable expectation for success in arriving at a bait composition that comprises soynut butter, sucrose or fructose and hexaflumuron. While Liang does not teach using soynut butter, Liang does teach using soynut powder. It is the position of the Examiner that powder form is identical to the butter form, expect that the powder does not have any water. That is, the powder form of soynut is a dehydrated butter form. Hagiwara confirms such a notion. Hagiwara states that soybean powder contains the oils and proteins of the soybean, but lack moisture (see column 2, lines 40-45, column 3, lines1-10 and column 4, line 30). Thus, one would have had a reasonable expectation for success in arriving at a composition with exactly the same nutritional and luring properties, with respect to the inclusion of soy, to that being claimed.

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10. Liang incorporates white sugar into their composition. It is well known in the art that sugar consists mostly of sucrose with minor amounts of fructose (no reference cited). Thus, the white sugar required by Liang meets the limitation of the instant claim. The weight ratio set forth by the instant claim is also obvious. As Liang discloses a wide range of potential weight percentages for the soynut and the sugar, one of ordinary skill would be capable of optimizing their very own composition by picking and choosing from values within said ranges. If the results was a new, optimized composition wherein the soynut to sugar ratio was 1:0.1 (or 1:0.3), then this would be a product of ordinary product formulation and common skill. Regarding the inclusion of hexaflumuron, this is obvious. Because Liang is directed to cockroach bait, one would have been motivated to look to the art for other cockroach pesticides. Hexaflumuron was well known at the time to be an effective cockroach killer and one would have been motivated to include it in the composition of Liang with a reasonable expectation for success in killing cockroaches. With respect to the requirement that the bait be capable of being dispensed from a syringe, the composition of Liang is capable of such as it appears to be a viscous liquid-type composition as it contains fatty components. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

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12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Kyle Purdy/
Examiner, Art Unit 1611
January 8, 2009*

*/David J Blanchard/
Primary Examiner, Art Unit 1643*